

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHONTAY L. SMITH
Claimant

VS.

U.S.D. 233
Self-Insured Respondent

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Docket No. 1,029,822

ORDER

STATEMENT OF THE CASE

Respondent requested review of the September 3, 2008, Order entered by Administrative Law Judge Steven J. Howard. Keith L. Mark, of Mission, Kansas, appeared for claimant. Christopher J. McCurdy, of Overland Park, Kansas, appeared for the self-insured respondent.

The Administrative Law Judge (ALJ) denied respondent's request to extend its terminal date.

The record on appeal is the same as that considered by the ALJ.

ISSUES

Respondent requests review of the ALJ's denial of its motion to extend its terminal date, arguing that it had good cause for the extension. Respondent further argues that the Board has jurisdiction over this appeal because the ALJ's decision was a final order which resolved the issue of the admission of evidence.

Claimant argues that there is no jurisdiction for respondent's appeal of the ALJ's Order of September 3, 2008, as it is interlocutory. In the event the Board finds it has jurisdiction to hear this appeal, claimant argues that respondent has not shown good cause for the extension of its terminal date.

The issues for the Board's review are:

- (1) Does the Board have jurisdiction over the issue in this appeal?
- (2) If so, did the respondent show good cause for an extension of its terminal date?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After a review of the file and the arguments presented by the parties to the ALJ at the motion hearing held September 2, 2008, and in their briefs to the Board, the Board finds and concludes that it does not have jurisdiction to review the ALJ's Order of September 3, 2008, at this time.

The ALJ's Order denying respondent's request for an extension of its terminal date is interlocutory in nature. Respondent's appeal of the Order is premature. It is not a final order that can be reviewed pursuant to K.S.A. 2007 Supp. 44-551. That statute limits the Board's jurisdiction to review of "final orders." It does not grant authority to review interlocutory orders. The ALJ's Order is not final because it does not resolve the case and it can be reviewed by the Board if there is an appeal from the ALJ's final award. Furthermore, the order does not concern an issue that came before the ALJ pursuant to the preliminary hearing statute, K.S.A. 44-534a, as preliminary hearing orders are limited to issues concerning the furnishing of medical treatment and the payment of temporary total disability compensation.

The order before the Board pertains to an interlocutory matter over which the ALJ has authority to adjudicate. As such, it is not an order which the Board can review at this stage of the proceedings.

WHEREFORE, it is the finding, decision and order of the Board that respondent's appeal of the Order of Administrative Law Judge Steven J. Howard dated September 3, 2008, is hereby dismissed.

IT IS SO ORDERED.

Dated this _____ day of November, 2008.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Keith L. Mark, Attorney for Claimant
Christopher J. McCurdy, Attorney for Self-Insured Respondent
Steven J. Howard, Administrative Law Judge